

**The Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Administrative Office
Two Center Plaza, Suite 210
Boston, MA 02108**

**Probate and Family Court Law Clerk
Position Description and Application
September 1, 2007- August 31, 2008**

Posting Dates: July 3, 2006 through September 28, 2006

Position Description: A judicial clerkship in the Massachusetts Probate and Family Court offers a unique, exciting and rewarding environment in which to begin a legal career. The Probate and Family Court hears cases on subjects relating to all aspects of a person's life, from birth to death. Law clerks in the Probate and Family Court are exposed to a wide variety of family, probate and equity issues; including adoption, paternity, custody, divorce, guardianships, legal bioethics, petitions to partition real estate, trust reformations and will contests. The law in these areas is constantly evolving and cases of first impression often confront the court, making a clerkship experience in the Probate and Family Court interesting and challenging.

Law clerks work directly with the Justices, and under the supervision of the Administrative Attorney for Legal Research Services and the Chief Justice. Law clerks conduct research, write legal memoranda, and draft findings of fact, conclusions of law, judgments, and orders. In addition, law clerks have the opportunity to observe hearings and trials which expose them to court procedure and evidentiary issues.

Law clerks in the Probate and Family Court serve a one-year term. Each spring, a select number of law clerks are invited to return for an additional year.

Law clerks apply to serve in either Eastern or Western Massachusetts. The majority of opportunities to serve are in Eastern Massachusetts. All law clerks are assigned by the Administrative Attorney for Legal Research Services to three rotations of four months each. In Eastern Massachusetts, the law clerks may be assigned to any of the following eight divisions: Bristol, Barnstable, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester. Law clerks in Eastern Massachusetts may also be assigned to the Administrative Office. In Western Massachusetts, law clerks are assigned to the Berkshire, Hampshire, Hampden, and Franklin Divisions. The rotation system gives law clerks the opportunity to work with numerous judges and to gain a broader understanding of the workings of the Probate and Family Court.

Position Requirements: The Probate and Family Court invites well-rounded and distinguished law students, recent law school graduates, and practicing attorneys to apply for the clerkship positions. Solid academic credentials are important, however, there are no rigid requirements regarding class rank or standing. Courses in probate and/or family law, research assistant positions, prior work experience in the areas of probate and family law and clinical placements/internships are considered important and are viewed quite favorably.

The Probate and Family Court seeks applicants who: demonstrate an interest in probate and/or family law; possess an ability to write legal memoranda clearly and concisely; possess knowledge of legal research techniques and court procedures and practices; possess an ability to establish working relationships with Justices; possess an ability to adjust to different courthouse environments and personnel; will commit in writing to serve for the entire one-year term; possess a law degree from an ABA accredited law school as of September 1, 2007, or are statutorily eligible to sit for the Massachusetts Bar Exam; are residents of the Commonwealth of Massachusetts for the duration of the law clerk term; and have access to a motor vehicle for travel to court locations throughout Eastern or Western Massachusetts.

AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER

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SECTION A: Preparation of the Application Package

Please read the following instructions carefully. Incomplete or late packages will not be considered.

The application package must be postmarked by September 28, 2006. Each applicant must submit **four sets** (an original and three copies) of the following materials, which will constitute the "Application Package." The application package must be stapled and collated in the following order ("1." on top):

1. Cover Letter

In a one page cover letter, please explain your interest in a judicial clerkship with the Probate and Family Court. Briefly outline your background, if any, in probate and/or family law. Please indicate whether you are applying to serve in Eastern Massachusetts or Western Massachusetts.

2. Massachusetts Trial Court Application for Employment Form

The Trial Court application form is available at any Massachusetts state courthouse. The form may be also downloaded by going to www.mass.gov/courts/site/index.html, and clicking on "Application for Employment." The form must be completed in its entirety, unless a section is specifically noted as voluntary.

3. Resume

4. Law School Transcript

An unofficial transcript may be submitted with the application package. When submitting the application package, please do not have your law school forward your transcript separately. Your transcript must be included in your application package.

If offered a law clerk position, prior to the commencement of employment in September 2007, an official law school transcript is required to verify your final academic record and date of graduation.

5. Writing Sample

Each applicant must submit a writing sample based upon one of the three factual scenarios included in Section E of this application. The writing sample shall consist of a six-page memorandum of law on one of the factual scenarios on pages four through five of this Position Description and Application. **Please do not send any other writing sample.** Please note the following guidelines:

- a. Apply only Massachusetts law.
- b. The writing sample may not exceed six pages. It must be typed and double-spaced.
- c. The writing sample must be the original work of the applicant and may not be edited by another party.

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SECTION B: Submission of the Application Package

Please submit the completed application package (four sets, consisting of the original application package and three copies) to the address below:

PROBATE AND FAMILY COURT ADMINISTRATIVE OFFICE
Attention: Denise M. Fitzgerald, Administrative Attorney for Legal Research Services
Two Center Plaza, Suite 210
Boston, MA 02108

1. The application package as described in Section A must be **postmarked** no later than **Thursday, September 28, 2006**. Late application packages will not be considered.
2. Please do not submit an incomplete application package. Amendments or additional information will not be accepted. Incomplete application packages will not be considered.
3. Please do not fax or e-mail any portion of the application package. Faxes and e-mails will not be considered.
4. Please do not telephone the Administrative Office with inquiries regarding the receipt of your application package. If you would like acknowledgment of the receipt of your application, please include a self-addressed, stamped envelope with your application package. Please allow ten days for the return of the acknowledgment.

SECTION C: Interview Process

Two rounds of interviews are conducted for these positions. The first round is held in October before a three-person panel consisting of a Justice of the Probate and Family Court, the Court Administrator and the Administrative Attorney for Legal Research Services.

The second round of interviews is held in late October or early November before a three-person panel consisting of the Chief Justice of the Probate and Family Court, the Court Administrator and the Administrative Attorney for Legal Research Services.

Offers are extended in late November or early December.

SECTION D: Benefits Package

The employee benefits package is consistent with other Massachusetts Trial Court law clerk programs and includes:

1. a first-year salary of \$ 47,018.74 (Level 16, Step 1);
2. subsidized health, dental and vision insurance;
3. paid vacation, personal and sick time.

In addition, Probate and Family Court law clerks are afforded the opportunity to attend educational seminars.

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SECTION E: Writing Sample Factual Scenarios

Question 1

Michael Flaherty was born on January 1, 1926. He married on July 4, 1956 and had two daughters, Anne, in 1957, and Beatrice, in 1959. Michael's wife died shortly after the birth of Beatrice. Michael was an independent thinker and a free spirit. He encouraged his daughters to be the same. Once Anne and Beatrice graduated from college, they each left their father's home and traveled throughout the world, rarely staying in any one place for longer than three months. Each daughter would visit Michael at least two times per year. Although Michael missed his daughters very much, he respected their decision to follow their hearts and dreams. In 1996, at the request of his sister, Michael agreed to let his nephew, Andrew, move in with him while Andrew attended law school. Once Andrew graduated from law school in 1999, he urged his uncle to get his affairs in order. Michael told Andrew that he would take care of it and the two never spoke of it again. Unbeknownst to Andrew, Michael had made arrangements in 1997. Michael had executed a health care proxy naming his eldest daughter as proxy. He had also executed a power of attorney in favor of Andrew. Michael's 1997 will provided a small bequest to Andrew. Anne and Beatrice were the residual beneficiaries of Michael's estate. On April 2, 2006, Michael fell down the stairs in his home and broke his hip. Andrew, who had remained living with and caring for his uncle, went to the hospital with Michael. Michael experienced some mental confusion after his fall but the doctors told Andrew that it was common and that it should be temporary. On April 4, 2006, Andrew, worried that his uncle had never set his affairs in order, suggested that Michael execute a will. Michael agreed. Andrew asked an attorney that he knew to come to the hospital to meet with Michael. The attorney and Michael met three times. At each meeting, Andrew sat on the edge of Michael's hospital bed. On April 14, 2006, Andrew arranged for two nurses at the hospital to act as witnesses to Michael's will. This will provided that Anne and Beatrice would receive small bequests and the residuary would go to Andrew. Michael died on June 1, 2006. On July 15, 2006, Andrew filed a petition for probate of will and a request that he be appointed executor. The will that was filed with the petition was dated April 14, 2006. Anne and Beatrice filed an affidavit of objections to the will and to Andrew's appointment as executor. Anne and Beatrice believe that their father lacked the capacity to execute the April will and that it was the product of undue influence by Andrew. Andrew filed a motion for summary judgment. Anne and Beatrice oppose the motion for summary judgment as Andrew has not filed a motion to strike their appearance and their affidavit of objections.

The judge would like your assistance with this matter and has asked to research the following issues:

1. How should the judge determine and allocate the burden of proof on the issues of testamentary capacity and undue influence?
2. Under what authority may the judge dispose of this case through the summary judgment motion? How should the judge proceed to resolve the objections to the will and appointment of the named executor?

Question 2

Harry and Wanda began dating seriously in college. After graduation in 1995, Harry enrolled in medical school and Wanda worked as a graphic designer for a magazine. Wanda and Harry considered moving in together but Wanda was concerned about how they would pay for medical school. Harry told her not to worry about his education. He had a little money left over from money received after his father died in a plane crash. Wanda agreed to move in with Harry and they used her income to pay the bills. Harry and Wanda got engaged in 1997. Four weeks before their wedding, Harry presented Wanda with a pre-nuptial agreement. Wanda didn't understand why they would need an agreement since they didn't really have that much. They rented an apartment and drove used cars. They rarely ate out or vacationed. Wanda did have a small retirement account and some antique jewelry worth approximately \$17,000. Wanda did not sign the agreement that day. The matter was not discussed again until the morning of their wedding when Harry presented Wanda with another copy of the agreement to sign. Wanda said she would think about it. While getting dressed for the wedding, Wanda briefly discussed the issue with her sister, a new attorney. Her sister told her that it seemed like a standard agreement. Still not knowing exactly why they needed a pre-nuptial agreement, but not wanting to ruin their wedding day, Wanda signed the agreement. The agreement provided that, in the event of a divorce, any separate property

that each had at the time of the wedding would remain separate property. If the parties owned a home at the time of divorce, Wanda would be entitled to retain the title to it. The parties also waived any right to alimony. A schedule of assets was not prepared. Harry and Wanda proceeded with the wedding on June 19, 1998. Harry graduated from medical school the next year. In 2000, Harry and Wanda bought a modest three-bedroom home. In 2002, while pregnant with their first child, Connie, the magazine that Wanda worked for folded. Wanda lost her job and her retirement account, which was valued at \$34,981.32. Because Harry's surgery practice was thriving, Harry and Wanda agreed that Wanda would not work outside of the home full-time. Wanda did teach art classes a few times a month. The day before their eighth wedding anniversary, Wanda discovered two shocking items: a recent bank statement with Harry's name on it and a letter written by Harry's father. Harry's father had not died in a plane crash. He had left his family to "find himself." Before he left, he established a bank account with a substantial sum of money to provide for Harry. The bank account currently had a balance of \$2,000,000. Wanda felt betrayed and was irate that Harry had lied to her all these years. Shortly thereafter, Wanda filed for divorce. In her complaint, she asserts that their pre-nuptial agreement should not be enforced and seeks custody of Connie, child support and alimony.

The judge has asked for your help in determining the following:

1. Is the pre-nuptial agreement valid and enforceable?
2. May the judge award short-term alimony to Wanda?
3. When considering the amount of child support to award, may the judge consider attributing income to Wanda?

Question 3

Bobby and Jane met at the gym in 1992 and were immediately attracted to each other. Bobby was 25 and a personal trainer. Jane was 40 and had been practicing law for 15 years. Prior to being an attorney, Jane had been a fashion model. Shortly after meeting, Bobby moved into Jane's one-bedroom townhouse. At that time, Bobby and Jane memorialized in writing that while he lived in the townhouse Bobby's only financial responsibility was to pay for the utilities and food. Two years later, Bobby and Jane considered buying a home together. Jane sold her townhouse and used the proceeds for a \$100,000 down payment on a waterfront property. Although Bobby did not contribute financially to the purchase of the property, he was listed on the mortgage and deed. Bobby assumed that they would split the bills the same way as they had before. In 1995, Jane began to worry that Bobby would leave her for a younger woman. Jane repeatedly told Bobby that she wanted to get married. Begrudgingly, in 1996, Bobby proposed, paying for the engagement ring with money from their joint banking account. Even though Bobby had assumed he would marry someone closer to his age, Bobby was satisfied that he would be taken care of financially. In 1997, Bobby became bored with his job at the gym, and began helping Jane with her law practice. He scheduled appointments, billed clients and handled marketing and public relations for her firm. Bobby did not receive a salary from Jane. Instead, they had an understanding that Jane would take care of him. After waiting ten years to set a wedding date, Jane finally realized that Bobby was never going to marry her and asked him to leave the waterfront property. Bobby filed a complaint in the Probate and Family Court seeking an equitable distribution of the waterfront property and half of the money in their joint bank account. Bobby also wants to be compensated for working in Jane's law practice. Jane filed a cross complaint seeking reformation of the deed and a declaration that she is the sole owner of the waterfront property.

The judge has come to you seeking advice:

1. What rights do Bobby and Jane have in relation to the waterfront property and joint bank account?
2. Does the court have the authority to compensate Bobby for his work?